

REMARKS

Claims 1-20 are pending in this application. Claims 1-3, 6-9, 11-15, 18 and 20 have been rejected under as anticipated by the patent to Stanish (U.S. 4,216,875). Claims 10 and 19 have been rejected as unpatentable over Stanish in view of Murdick (U.S. 5,706,974). Further, Claims 4, 5, 16, and 17 have been rejected as unpatentable over Stanish in view of Atkinson (U.S. 5,705,212).

Applicant has amended the claims so that they should define over the art of record. Specifically, Applicant has amended Claims 1 and 13 to indicate that the invention has only three specific points of contact, and these contact points are not found in any cited art.

The Examiner rejected Claims 1-3, 6-9, 11-15, 18 and 20 as anticipated by the patent to Stanish (U.S. 4,216,875). Examiner maintains that Stanish teaches three points of contact for utensil 52, and Examiner further contends that the third point of contact can be found at intermediate barrier wall portion 68 of utensil 52. The Applicant traverses this rejection because 68 in Stanish is not a point of contact. Utensil 52 in Stanish has only two points of contact, namely ends 64 and 62. Stanish teaches that there is contact between wall 108 (with projecting surfaces 119) and ends 64 and 62 of the utensil, and further that this contact frictionally holds the utensil in place. *See* Stanish col. 5, lines 48-50 (“Accordingly when the utensil 26 is disposed within the recess 118 contiguous with the topside 116 it is frictionally held in place against accidental removal by the presence of the projecting surfaces 119.”). However, Stanish does not contemplate contact of intermediate barrier wall portion 68 with any portion of lid 24. First, Stanish does not contemplate any contact between end 64 and disk portion 28 of lid 24. Stanish also teaches that intermediate barrier wall portion 68 is planar and is also coplanar with end 64. (Stanish at Col. 4, lines 51-55). Because there is no contact between end 64 and disk portion 28 of lid 24, and because intermediate barrier wall portion 68 is coplanar with end 64, it follows that there cannot be any contact between intermediate barrier wall portion 68 and disk portion 28. Accordingly, there is no third point of contact at intermediate barrier wall portion 68 with any part of lid 24. As such, utensil 52 in Stanish has only two points of contact to ensure the utensil is securely held within the cap. Applicant’s invention discloses three points of contact in the cap for holding the utensil in the cap. Further, as recited in Claim 13, the three points of contact ensure that the utensil is securely held within the cap, a feature not available from Stanish.

With respect to claims 10 and 19, which depend from claims 1 and 14, respectively, the Examiner relies on Stanish in view of Murdick (U.S. 5,706,974). As discussed above, Stanish does not disclose the claimed invention because of Stanish's lack of three points of contact, with the third point of contact ensuring that the utensil is securely held within the cap. Accordingly, Claims 10 and 19 cannot be obvious therefrom.

The same holds true for Atkinson (U.S. 5,705,212). Claims 4, 5, 16, and 17 also recite the three points of contact within the cap for securely holding the utensil therein. Claims 4, 5, 16, and 17 should therefore be patentable over Stanish in view of Atkinson.

The Applicant traverses the objections and rejections made by the Examiner and submit that Claims 1-20 are in condition for allowance. The Applicants request the Examiner to remove the stated objections and rejections and issue a Notice of Allowance for Claims 1-20.

If the examiner finds that there are any outstanding issues which may be resolved by a telephone interview, the Examiner is invited to contact the undersigned at the below listed number.

The Examiner is authorized to charge Deposit Account No. 23-0920 to cover any shortage of fees and requested to charge said charge account in the event that there has been an underpayment relating to this application.

Respectfully submitted,
WELSH & KATZ, LTD.

By 
Gerald T. Shekleton

Registration No. 27,466

December 8, 2005

WELSH & KATZ, LTD.
120 S. Riverside Plaza, 22nd Floor
Chicago, Illinois 60606
Phone: (312) 655-1500
Fax: (312) 655-1501